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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/326,014	06/04/1999	M. FRANCIS BOTTS	MOAR:100-41-	3572
27530	7590	07/05/2005	EXAMINER	
NELSON MULLINS RILEY & SCARBOROUGH, LLP			LEVY, NEIL S	
1320 MAIN STREET, 17TH FLOOR			ART UNIT	
COLUMBIA, SC 29201			PAPER NUMBER	

1615

DATE MAILED: 07/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/326,014	Applicant(s) BOTTS ET AL.	
	Examiner NEIL LEVY	Art Unit 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-8,12-18,36-38 and 40-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-6,8,12-18,36-38,40-44 and 46-51 is/are rejected.
- 7) ☒ Claim(s) 7 and 45 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 3-6, 8, 12-18, 36-38, 40-44, 46-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kanda – EP 0201214 in view of ~~Reiter~~ ^{Reiter} – EPO 364406 and Tocker EP 0004758.

Pesticides; fungicides insecticides, herbicides are incorporated at a molecular level, or, as is instantly claimed, in a non-homogeneous distribution within a particulate solid polymeric matrix (p.3) of 0.01 – 250 micron, providing controlled release. Polymer is formed of methyl methacrylate. Plasticizer, as water, may be used.

Particles may be in legend suspensions, or as powders or granules, milled to size desired (Day 7, lines 12-18).

Emulsifiers, the instant dispersants may be added (page 16, claim 10). Example 1 shows about 1:13 ratio of fungicide to polymer. The specific instant Triazoles are not named.

~~Reiter~~ has them (col. 2, P. 2) as dust free particles.

Dao is cited for seed treatment, of particles of fungicides, Tebuconazole, example 1. Finally, Tocker specifically provides insecticides and other pesticidal actives, including fungicides, (p. 11, 12) in similar particle matrices (example 1) applied to plants (p.9-11). Thus, obvious to one in the horticultural arts to use with any of the Ag. Chemicals and delivery forms of Kanda/recites.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize controlled compositions to use Kanda modified

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with Fungicide, in order to have products with dust-free contamination. Reuter shows the fungicides able to be used with safety, when preparing agricultural compositions.

It has not clearly been established by objective showing of some unobvious and/or unexpected results that administration of the particular form of active, carrier, or the particular Locus to be treated provides any greater level of prior art expectation as claimed. Further, applicant has showed no criticality as to the ingredient actives concentrations, ratios or Applicant, except for the combination of the triazoles with specific polymers.

Applicant's arguments filed on 3/23/05 have been fully considered but they are not persuasive. Applicant's arguments, where persuasive have resulted in withdrawal of rejections, but are still. See the prior art as providing particulate polymer matrices containing embedded or impregnated or otherwise incorporated Ag. Chemicals, including fungicides as instantly claimed with a multitude of acceptable polymers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (571) 272-0619. The examiner can normally be reached on Tuesday through Friday 7 AM to 5:30 PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

A handwritten signature in black ink, appearing to read "Neil Levy", is located at the bottom right of the page.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Levy/LR
June 14, 2005



NEIL S. LEVY
PRIMARY EXAMINER